

3. Based on information and belief and according to documents on file in the State Engineer's Office, Plaintiff alleges that Defendant Howard Marshall (hereinafter "Marshall") has an ownership interest in a 40-acre parcel of property located south of Milford in Beaver County, in the Southwest 1/4 of the Southeast 1/4 of Section 4, Township 29 South, Range 10 West, SLB&M (hereinafter "the property").

4. Marshall is the owner of Water Right No. 71-3616, evidenced by Certificate of Permanent Change of Water No. a2095. A copy of Change Certificate No. a2095 is attached as Exhibit 1 and is incorporated herein.

5. Water Right No. 71-3616 is limited to stockwatering use for 20 equivalent livestock units, and domestic use for one family supplied from a well. When Certificate of Change No. a2095 was issued by the State Engineer, Marshall was given the opportunity to appeal the Certificate. Marshall did not appeal the Certificate.

6. No irrigation use is authorized under Water Right No. 71-3616. Furthermore, there is no water right for which the property is an authorized place of use for irrigation.

7. The area in the vicinity of Milford, particularly the region surrounding Marshall's well, has for several decades suffered declining water levels in the groundwater basin. Concern over the groundwater decline has resulted in intensive

administration by the State Engineer, and in several on-going technical and hydrologic studies of groundwater withdrawal and declining groundwater levels.

8. Because of concerns over the decline in groundwater levels, the State Engineer and the local water users are addressing the problems of excessive pumping and expanded irrigation in the groundwater basin.

9. In or about 1996, Marshall cultivated the property and connected and extended a pipeline from the well under Water Right No. 71-3616 to the property.

10. By way of letter dated April 24, 1996, Marshall was advised by the Division of Water Rights of the limitation of Water Right No. 71-3616. Specifically, Marshall was told that no irrigation was authorized under the water right from the well. A copy of the April 24, 1996 letter is attached as Exhibit 2 and is incorporated herein.

11. During the 1996 irrigation season, Marshall irrigated 31 acres, which was 31 acres in excess of the acreage allowed under Water Right No. 71-3616. The unlawful irrigation during 1996 was observed and documented by employees of the Division of Water Rights and confirmed by aerial photography.

12. On October 8, 1996, the State Engineer sent an order to Marshall notifying him again that the excess irrigation was a

violation of Utah State law and ordering him to cease all use of water in excess of the limits established by Water Right No. 71-3616. A copy of the October 8, 1996 Order is attached as Exhibit 3 and is incorporated herein.

13. During the 1997 irrigation season, Marshall irrigated 31 acres, which was 31 acres in excess of the acreage allowed under Water Right No. 71-3616. The unlawful irrigation during 1997 was observed and documented by employees of the Division of Water Rights and confirmed by aerial photography.

14. On October 15, 1997, the State Engineer sent an order to Marshall notifying him that the excess irrigation was a violation of Utah State law and ordering him to cease all use of water in excess of the limits established by Water Right No. 71-3616. A copy of the October 15, 1997 Order is attached as Exhibit 4 and is incorporated herein.

15. During the 1998 irrigation season, Marshall irrigated 31 acres, which was 31 acres in excess of the acreage allowed under Water Right No. 71-3616. The excess irrigation during 1998 was observed and documented by employees of the Division of Water Rights and confirmed by aerial photography.

16. On October 9, 1998, the State Engineer sent an order to Defendant notifying him again that the excess irrigation was a violation of Utah State law and ordering him to cease all use of

water in excess of the limits established by Water Right No. 71-3616. A copy of the October 9, 1998 Order is attached as Exhibit 5 and is incorporated herein.

17. On or about March 31, 1999, Marshall was again ordered not to irrigate from the well. In addition, the well valve was tagged under the direction of the State Engineer and LaVar Davis, water commissioner for the Milford Valley groundwater distribution system. A copy of the March 31, 1999 Order is attached as Exhibit 6 and incorporated herein.

18. Marshall was informed in the March 31, 1999 Order that should irrigation from the well occur, a Complaint would immediately be filed with the district court.

19. On June 1, 1999, Kerry Carpenter, Southwestern Regional Engineer for the State Engineer, personally observed irrigation of alfalfa on the property from the well.

20. Marshall is in direct violation of the State Engineer's Order of March 31, 1999 and is irrigating unlawfully without a water right.

21. Marshall has had notice on numerous occasions that his water right was not authorized for irrigation, that the State Engineer was authorized by state law to enforce the limits of water rights, and that he has been in violation of his water right for several irrigation seasons.

22. Plaintiff believes and on information and belief alleges that Marshall has demonstrated by past conduct that unless this Court, by appropriate order, requires Marshall to cease his use of water in excess of his lawfully-established water right, he will continue to use water in excess of his water right and irrigate lands not covered by his water right, which will cause the following irreparable damage:

a. Marshall's unlawful use of water in excess of his water right deprives other water users in the Milford Valley groundwater basin of water that they have a legal right to use.

b. Marshall's unlawful use of water in excess of his water right exacerbates the critical problem of declining groundwater levels in the Milford Valley groundwater basin.

c. Marshall's use of water in excess of his lawfully-established water right is a violation of Utah Code Ann. § 73-3-1 (1989), which states, "No appropriation of water may be made and no rights to the use thereof initiated ... except application for such appropriation first be made to the state engineer in the manner hereinafter provided, and not otherwise."

d. Marshall's unlawful use of water in excess of his water right violates the order issued by the State Engineer on

October 8, 1996, October 15, 1997, October 9, 1998 and March 31, 1999.

23. Rule 4-303 of the Code of Judicial Administration requires the State Engineer to request an award of the filing fees for this action.

WHEREFORE, Plaintiff prays for judgment against the Defendant Howard Marshall as follows:

1. That Defendant be temporarily and permanently restrained and enjoined by the Court from irrigating the property until a valid water right is obtained, and from diverting and using water for irrigation of any land under Water Right No. 71-3616; and

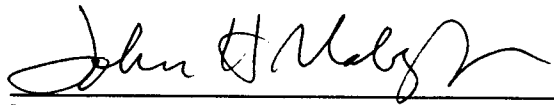
2. That the Court immediately issue an Order to Show Cause requiring Defendant to appear at the time set by the court and show cause, if any, as to why temporary and preliminary injunctions should not issue forthwith enjoining and restraining Defendant from irrigating the property and from using water for irrigating any land under Water Right No. 71-3616, pending a final decision of the matter by this Court; and

3. For an Order perpetually enjoining and restraining Defendant from irrigating the property until a valid water right is obtained, and from using water from Water Right No. 71-3616 except in accordance with his valid existing water rights and in accordance with the laws of the State of Utah; and

4. For an award of the filing fees for this action; and
5. For such other relief as the Court deems appropriate.

DATED this 4th day of June, 1999.

JAN GRAHAM
Utah Attorney General



MICHAEL M. QUEALY
JOHN H. MABEY, JR.
Assistant Attorneys General
ATTORNEYS FOR PLAINTIFF UTAH STATE
ENGINEER
1594 West North Temple, Suite 300
Salt Lake City, Utah 84116

Plaintiff's Address:

Robert L. Morgan, State Engineer
1594 West North Temple, Suite 220
Salt Lake City, Utah 84116

CERTIFICATE OF PERMANENT CHANGE OF WATER

STATE OF UTAH

WATER RIGHT No: 71 - 3616 CHANGE APPLICATION No: a17045 CHANGE CERTIFICATE No: a2095

NATURE OF CHANGE: Point of Diversion [X] Place of Use [] Nature of Use [X]

1. WATER RIGHT AND OWNERSHIP INFORMATION:

- A. NAME: Howard Marshall
ADDRESS: P. O. Box 232, Minersville, UT 84752
- B. RIGHT EVIDENCED BY: U7705
on which the following Change Application(s) have been filed:
Change Application No. a17045, Certificate No. a2095
- C. PRIORITY DATE: 1928 PRIORITY OF CHANGE a17045: October 19, 1992

2. SOURCE INFORMATION:

- A. QUANTITY OF WATER: 1.0 acre-feet
- B. DIRECT SOURCE: Underground Water Well
- C. POINT OF DIVERSION -- UNDERGROUND:
(1) N 223 feet E 3653 feet from SW corner, Section 4, T 29S, R 10W, SLBM
WELL DIAMETER: 6 inches WELL DEPTH: 425 feet
- D. DRAINAGE AREA: Escalante Valley COUNTY: Beaver

3. WATER USE INFORMATION:

STOCKWATERING: from Jan 1 to Dec 31. EQUIVALENT LIVESTOCK UNITS: 20.
DOMESTIC: from Jan 1 to Dec 31. FAMILIES: 1.

LIMITATION(S) -- Water Right 71 - 3616 is limited to:
an annual diversion for stockwatering of 0.55 acre-feet.

Continued on next page.

Certificate of Change

EXHIBIT 1

4. PLACE OF USE: (which includes all or part of the following legal subdivisions:)

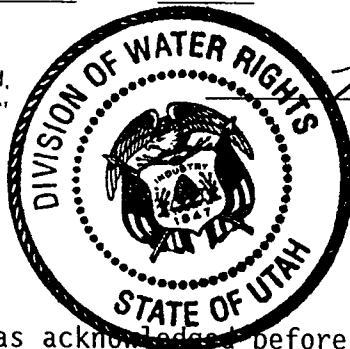
BASE	TOWN	RANG	SEC	NORTH-EAST $\frac{1}{4}$				NORTH-WEST $\frac{1}{4}$				SOUTH-WEST $\frac{1}{4}$				SOUTH-EAST $\frac{1}{4}$			
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
SL	29S	10W	4				■ ■ ■				■ ■ ■				■ ■ ■				X

5. SIGNATURE OF STATE ENGINEER & ACKNOWLEDGMENT OF NOTARY PUBLIC:

The right evidenced by this certificate is restricted to the change described herein, and the certificate in no way establishes nor validates the water right claimed by the applicant, and the change is to in no way enlarge the original right or rights. This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste of water. The works used in this change are to be operated and maintained in such a manner and condition as will prevent waste of water.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this
6th day of August, 19 93.

In the event the right evidenced by this certificate is transferred, a copy of such transfer should be furnished the State Engineer by the party acquiring the right.



Robert L. Morgan
 State Engineer

STATE OF UTAH)
) SS
 COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this
6th day of August, 19 93 by ROBERT L. MORGAN, State Engineer of Utah.

Joelle Dickson
 Notary Public

